HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 351 OF 2007.

Shamrao Baburao Chavan. ..Appellant.

Versus.

Sanjay Rangrao Vadar. ..Respondent.

Mr. R.A.Thorat for the appellant.

Mr. P.H.Gaikwad i/b S.P.Kadam for the respondent.

CORAM: A.S.OKA, J.

DATE: DECEMBER 7, 2007.

P.C.

1. Heard learned counsel appearing for the appellant. The appellant is the original defendant. The respondent filed a suit for specific performance of the agreement dated 12.3.2001 for sale of the suit property executed by the appellant in his favour. The suit was contested by the appellant by contending that he never intended to execute an agreement for sale and in fact the transaction between the appellant and the respondent was a loan transaction. The defence of the appellant is that the signature of the appellant was obtained on a blank stamp paper by the respondent while advancing amount to the appellant. It was submitted that the appellant was having only undivided share in the suit property and in any event, the respondent is not entitled for decree for specific performance.

2. The trial Court passed the decree in favour of the respondent. In the appeal preferred by the appellant the decree for specific performance was maintained by the appellate Court. However, the decree was modified by directing the appellant to obtain the requisite permission of the Collector for sale of the suit land. The appellate Court directed that in case of refusal on the part of the Collector to grant permission there will be a decree in favour of the respondent for refund of the earnest amount with interest. The appellate Court held that the appellant had undivided share in the suit property. The appellate Court directed that the respondent will be entitled to possession of the share of the appellant which will be allowed to him in partition.

3. After having heard the submissions made by the learned counsel of the appellant, I find that no substantial question of law arises in the second appeal. The original defence raised by the appellant in written statement was that his signature was obtained on a blank stamp paper which has been used by the respondent for creating the suit agreement and the transaction between the parties was a money loan transaction. The Courts below and especially the appellate Court found that at the time of recording evidence, the appellant came out

with an altogether new case and even denied the signature on the document. Considering an altogether new case made out by the appellant and after comparing the signature on the agreement with the admitted signature of the appellant on Vakalatnama and affidavit, the Court rejected the defence of the appellant.

4. The appellate Court has protected the appellant by providing that the respondent will get the share in the suit property of the appellant which will be allotted to the appellant at the time of partition.

5. There is no merit in the second appeal. It is accordingly dismissed. There is no order as to the costs.

(A.S.OKA, J.)